

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHRISTIAN SMITH

Plaintiff

V.

LOWE'S HOME CENTERS, LLC

Defendant

§
§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO: 1:21-cv-00278

DEFENDANT'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332(a), 1441, and 1446, Defendant, Lowe's Home Centers, LLC, files this Notice of Removal of the civil action originally filed in the 250th Judicial District Court of Travis County, Texas entitled *Christian Smith v. Lowe's Home Centers, LLC*, Cause No. D-1-GN-21-000767 (the "State Court Action"). In support of this Notice of Removal, Lowe's states as follows:

1. Plaintiff filed suit on February 22, 2021 against Lowe's asserting claims of disability discrimination in violation of Chapter 21 of the Texas Labor Code and the Americans with Disabilities Act ("ADA"). Exhibit D.

2. Removal of the State Court Action is proper under 28 U.S.C. §§ 1332(a), 1441, and 1446 because there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000.

A. The Parties are Completely Diverse.

3. Plaintiff is an individual who resides in Texas. Lowe's is a limited liability company organized under the laws of the State of North Carolina with its principal place of business in North Carolina. Lowe's is a wholly-owned subsidiary of Lowe's Companies, Inc., a North Carolina corporation with its principal place of business in North Carolina. Accordingly,

Lowe's is a citizen of the state of North Carolina, and complete diversity of citizenship exists. *See Tewari De-Ox Sys. v. Mt. States/Rosen, Ltd. Liab. Corp.*, 757 F.3d 481 (5th Cir. 2014) (citizenship of a limited liability company is determined by the citizenship of its members).

B. The Amount in Controversy Exceeds \$75,000.

4. To determine the amount in controversy for the purpose of establishing diversity jurisdiction, the court ordinarily looks to the plaintiff's state court petition. *Manguno v. Prudential Prop. Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2001). In his Petition, Plaintiff seeks damages in an amount over \$1,000,000. Exhibit D ¶ 3.1. Therefore, the amount in controversy requirement of 28 U.S.C. § 1332(a) is met. *See Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880, 883 (5th Cir. 2000) (The amount in controversy is "'facially apparent' from Plaintiff's original petition that the claimed damages exceeded \$75,000.").

C. The Removal Complies with Fed. R. Civ. P. 81.

5. Removal of the State Court Action is timely as this Notice of Removal is filed within 30 days of the date upon which the summons for the State Court Action was served on Defendant. 28 U.S.C. § 1446.

6. Venue is proper in this district under 28 U.S.C. § 1441(a) because the court where the State Court Action is pending is located within this District.

7. Pursuant to 28 U.S.C. § 1446(a), attached hereto as Exhibit A is an index of documents filed in the State Court Action, and copies of all process, pleadings, orders, and other papers filed in the state court are attached to this Notice of Removal as Exhibits B-D.

8. Defendant will promptly notify the 250th Judicial District Court of Travis County, Texas of the removal of this action to federal court.

Accordingly, based on the foregoing, Defendant removes this action to the United States District Court for the Western District of Texas, Austin Division, and requests any and all such further relief and remedies to which it may be entitled.

Respectfully submitted,

PHELPS DUNBAR LLP

BY: /s/ Claudine G. Jackson

Claudine G. Jackson
Texas State Bar No.: 00793800
Andrea W. Paris
Texas State Bar No: 24085652
201 Main Street, Suite 1350
Fort Worth, TX 76102
Telephone: (817) 386-1166
Facsimile: (817) 386-1170
claudine.jackson@phelps.com
andrea.paris@phelps.com

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that on this 29th day of March, 2021, I electronically submitted the foregoing document with the clerk of the Court for the U.S. District Court, Western District of Texas, Austin Division, using the electronic case filing system of the court. I therefore certify that I have served all counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2) as follows:

John F. Melton
The Melton Law Firm, P.L.L.C.
925 South Capital of Texas Highway, Suite B-225
Austin, TX 78746
jmelton@jfmeltonlaw.com
Attorneys for Plaintiff

/s/ Claudine G. Jackson

Claudine G. Jackson